

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RAY COBIA,	:	Case No. 1:16-cv-727
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	Magistrate Judge Stephanie K. Bowman
vs.	:	
	:	
STATE OF OHIO, <i>et al.</i> ,	:	
	:	
Defendants.	:	

DECISION AND ENTRY
DENYING THE REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 4)

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on August 24, 2016, submitted a Report and Recommendations. (Doc. 4). Plaintiff filed objections (Doc. 6) and a motion for leave to amend his complaint (Doc. 7).

Plaintiff's claims challenge the validity of the criminal proceedings against him.¹ To assert these claims, he must first demonstrate that his conviction was declared invalid

¹ "I am seeking this court to Order the state remove both 2004 and 2013 off of my record not just to dismiss them but to exonerate me of the charges of 2004 and 2013, and award monetary [sic] to me for the 6 plus years that I was incarcerated." (Doc. 1 at 4).

by either an Ohio state court or a federal habeas corpus decision.² Magistrate Judge Bowman properly found that Plaintiff's complaint failed to state a federal claim for relief, because he failed to allege that the criminal charges were resolved in his favor. (Doc. 4 at 3).

However, Plaintiff subsequently filed a motion to amend, *newly citing* a January 30, 2015 opinion from the Hamilton County Court of Appeals. (Doc. 7-1). In that opinion, the Hamilton County Court of Appeals discharged Plaintiff's child-enticement convictions because Ohio Revised Code Section 29.05.05(A) was found to be unconstitutional and reversed his convictions for sexual battery and impersonating a peace officer. *State of Ohio v. Cobia*, No. C-140058, 2015 Ohio App. LEXIS 285, at *12 (Ohio App. Jan. 30, 2015). Accordingly, for good cause shown:

- (1) The Magistrate Judge's Report and Recommendations (Doc. 4) is **DENIED**;
- (2) Plaintiff's motion for leave to amend (Doc. 7) is **GRANTED** and Plaintiff shall file an amended complaint with detailed information about the reversal of his convictions forthwith;³
- (3) Upon filing the amended complaint, the United States Marshal shall serve a copy of the complaint, amended complaint, summons, the separate Order issued granting Plaintiff *in forma pauperis* status, and this Order and Report

² See, e.g., *Edwards v. Balisok*, 520 U.S. 641, 646 (1997) (a person convicted of a crime may not raise claims under Section 1983 if a judgment on the merits of those claims would affect the validity of his conviction or sentence, unless the conviction or sentence has been set aside).

³ The granting or denial of a motion to amend pursuant to Fed. R. Civ. P. 15(a) is within the discretion of the trial court. Leave to amend a complaint should be liberally granted. *Foman v. Davis*, 371 U.S. 178 (1962). In cases "where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice." *EEOC v. Ohio Edison Co.*, 7 F.3d 541, 546 (6th Cir. 1993).

and Recommendations upon the Defendants as directed by Plaintiff, with costs of service to be advanced by the United States;

- (4) Plaintiff shall serve upon Defendants or, if appearance has been entered by counsel, upon Defendants' attorney(s), a copy of every further pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed with the Clerk of Court a certificate stating the date a true and correct copy of any document was mailed to defendants or defendants' counsel. Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court; and
- (5) Plaintiff shall inform the Court promptly of any changes in his address with may occur during the pendency of this lawsuit.

IT IS SO ORDERED.

Date: 9/21/16

s/ Timothy S. Black
Timothy S. Black
United States District Judge